

sufficient time to make a determination of temporary need or ensure compliance with the criteria for certification contained in § 655.51, the CO will send a Final Determination letter to the employer in accordance with § 655.53.

[77 FR 10154, Feb. 21, 2012]

**§ 655.18 Job order assurances and contents.**

(a) *General.* Each job order placed in connection with an *Application for Temporary Employment Certification* must at a minimum include the information contained in paragraph (b) of this section. In addition, by submitting the *Application for Temporary Employment Certification*, an employer agrees to comply with the following assurances with respect to each job order:

(1) Prohibition against preferential treatment. The employer's job order must offer to U.S. workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H-2B workers. Job offers may not impose on U.S. workers any restrictions or obligations that will not be imposed on the employer's H-2B workers. This does not relieve the employer from providing to H-2B workers at least the minimum benefits, wages, and working conditions which must be offered to U.S. workers consistent with this section.

(2) Bona fide job requirements. Each job qualification and requirement must be listed in the job order and must be bona fide and consistent with the normal and accepted qualifications and requirements imposed by non-H-2B employers in the same occupation and area of intended employment.

(b) *Contents.* In addition to complying with the assurances in paragraph (a) of this section, the employer's job order must meet the following requirements:

(1) State the employer's name and contact information;

(2) Indicate that the job opportunity is a temporary, full-time position, including the total number of job openings the employer intends to fill;

(3) Describe the job opportunity for which certification is sought with sufficient information to apprise U.S. workers of the services or labor to be

performed, including the duties, the minimum education and experience requirements, the work hours and days, and the anticipated start and end dates of the job opportunity;

(4) Indicate the geographic area of intended employment with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the services or labor;

(5) Specify the wage that the employer is offering, intends to offer, or will provide to H-2B workers, or, in the event that there are multiple wage offers (such as where an itinerary is authorized through special procedures for an employer), the range of wage offers, and ensure that the wage offer equals or exceeds the highest of the prevailing wage or the Federal, State, or local minimum wage;

(6) If applicable, specify that overtime will be available to the worker and the wage offer(s) for working any overtime hours;

(7) If applicable, state that on-the-job training will be provided to the worker;

(8) State that the employer will use a single workweek as its standard for computing wages due;

(9) Specify the frequency with which the worker will be paid, which must be at least every 2 weeks or according to the prevailing practice in the area of intended employment, whichever is more frequent;

(10) If the employer provides the worker with the option of board, lodging, or other facilities, including fringe benefits, or intends to assist workers to secure such lodging, disclose the provision and cost of the board, lodging, or other facilities, including fringe benefits or assistance to be provided;

(11) State that the employer will make all deductions from the worker's paycheck required by law. Specify any deductions the employer intends to make from the worker's paycheck which are not required by law, including, if applicable, any deductions for the reasonable cost of board, lodging, or other facilities;

(12) Detail how the worker will be provided with or reimbursed for transportation and subsistence from the place from which the worker has come to work for the employer, whether in

## § 655.19

## 20 CFR Ch. V (4–1–13 Edition)

the U.S. or abroad, to the place of employment, if the worker completes 50 percent of the period of employment covered by the job order, consistent with § 655.20(j)(1)(i);

(13) State that the employer will provide or pay for the worker's cost of return transportation and daily subsistence from the place of employment to the place from which the worker, disregarding intervening employment, departed to work for the employer, if the worker completes the certified period of employment or is dismissed from employment for any reason by the employer before the end of the period, consistent with § 655.20(j)(1)(ii);

(14) If applicable, state that the employer will provide daily transportation to and from the worksite;

(15) State that the employer will reimburse the H-2B worker in the first workweek for all visa, visa processing, border crossing, and other related fees, including those mandated by the government, incurred by the H-2B worker (but need not include passport expenses or other charges primarily for the benefit of the worker);

(16) State that the employer will provide to the worker, without charge or deposit charge, all tools, supplies, and equipment required to perform the duties assigned, in accordance with § 655.20(k);

(17) State the applicability of the three-fourths guarantee, offering the worker employment for a total number of work hours equal to at least three-fourths of the workdays of each 12-week period, if the period of employment covered by the job order is 120 or more days, or each 6-week period, if the period of employment covered by the job order is less than 120 days, in accordance with § 655.20(f); and

(18) Instruct applicants to inquire about the job opportunity or send applications, indications of availability, and/or resumes directly to the nearest office of the SWA in the State in which the advertisement appeared and include the SWA contact information.

[77 FR 10154, Feb. 21, 2012]

### § 655.19 Job contractor filing requirements.

(a) Provided that a job contractor and any employer-client are joint em-

ployers, a job contractor may submit an *Application for Temporary Employment Certification* on behalf of itself and that employer-client.

(b) A job contractor must have separate contracts with each different employer-client. Each contract or agreement may support only one *Application for Temporary Employment Certification* for each employer-client job opportunity within a single area of intended employment.

(c) Either the job contractor or its employer-client may submit an ETA Form 9141, Application for Prevailing Wage Determination, describing the job opportunity to the NPWC. However, each of the joint employers is separately responsible for ensuring that the wage offer listed on the *Application for Temporary Employment Certification*, ETA Form 9142, and related recruitment at least equals the prevailing wage rate determined by the NPWC and that all other wage obligations are met.

(d)(1) A job contractor that is filing as a joint employer with its employer-client must submit to the NPC a completed *Application for Temporary Employment Certification*, ETA Form 9142, that clearly identifies the joint employers (the job contractor and its employer-client) and the employment relationship (including the actual worksite), in accordance with the instructions provided by the Department. The *Application for Temporary Employment Certification* must bear the original signature of the job contractor and the employer-client and be accompanied by a recruitment report bearing both joint employers' signatures and the contract or agreement establishing the employers' relationship related to the workers sought.

(2) By signing the *Application for Temporary Employment Certification*, each employer independently attests to the conditions of employment required of an employer participating in the H-2B program and assumes full responsibility for the accuracy of the representations made in the application and for all of the responsibilities of an employer in the H-2B program.

(e)(1) Either the job contractor or its employer-client may place the required job order and conduct recruitment as